

BakerHostetler

Baker&Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Torello H. Calvani
direct dial: 212.589.4657
tcalvani@bakerlaw.com

September 11, 2018

VIA ECF

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408
Bernstein.chambers@nysb.uscourts.gov

*Re: Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC,
Adv. Pro. No. 08-01789 (SMB); Picard v. Shapiro, et al., Adv. Pro. No. 10-05383 (SMB)*

Dear Judge Bernstein:

We are counsel to Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff, and as plaintiff in the above-referenced adversary proceeding against the Shapiro family defendants (“Defendants”). In support of the parties’ proposed Fifth Amendment to the Case Management Plan, we write at Your Honor’s request to explain why the parties were unable to complete discovery under the time allotted in the current Case Management Plan.

The proposed Fifth Amendment seeks, *inter alia*, to extend the fact discovery deadline for an additional four months, from September 30, 2018 to January 31, 2019. The extension is necessary because Defendants only recently were compelled to produce (*see* ECF No. 105), and certain Defendants did produce, documents in response to the Trustee’s requests, which he originally served in October of 2016 and then reframed more than fifteen months ago.¹ Questions remain regarding Defendants’ production. On August 18, 2018, the Trustee’s counsel wrote a letter to Your Honor requesting a conference regarding whether Defendants have retained responsive documents, have engaged in spoliation, and improperly maintained objections to requests to which they possess no responsive documents. (*See* ECF No. 108.) Nevertheless, with Defendants’ document production now seemingly substantially complete, the Trustee is finally in a position to begin taking depositions.

By contrast, the Trustee voluntarily began a rolling production to Defendants at the start of discovery and thereafter produced documents at regular intervals in response to Defendants’

¹ It was in this reframed form that the Court ordered Defendants to produce responsive documents.

Honorable Stuart M. Bernstein
September 11, 2018
Page 2

document requests. The Trustee substantially completely his production by August 2017. A few supplemental productions followed. In total, the Trustee has produced to Defendants more than 30,000 documents consisting of more than 800,000 pages.

The Trustee is eager to move this case along but simply has not been in a position to do so until only recently. In light of the above, the Trustee respectfully requests that the Court enter the proposed Fifth Amendment to the Case Management Plan.

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Torello H. Calvani

45 Rockefeller Plaza

New York, New York 10111

Telephone: 212.589.4200

Facsimile: 212.589.4201

David J. Sheehan

Email: dsheehan@bakerlaw.com

Torello H. Calvani

Email: tcalvani@bakerlaw.com

and

127 Public Square

Cleveland, Ohio 44114

Telephone: 216.621.0200

Facsimile: 216.696.0740

James H. Rollinson

Email: jrollinson@bakerlaw.com

*Attorneys for Plaintiff Irving H. Picard, Trustee
for the liquidation of Bernard L. Madoff Investment
Securities LLC and the consolidated estate of Bernard L. Madoff*